



## General Conformity Rule Implications to Wildland Fire Programs



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**Background:** On April 5, 2010, EPA finalized revisions to the 1993 General Conformity Rule. This 1993 rule was established to comply with the Clean Air Act (Section 176(C)(1)) requirements that federal actions must conform to a state, tribal, or federal implementation plan (SIP, TIP, or FIP). The intent of the General Conformity Rule is to prevent the air quality impacts of federal actions from causing or contributing to a violation of the National Ambient Air Quality Standards (NAAQS) or interfering with the purpose of a SIP/TIP/FIP.

The EPA website for this regulation is: <http://www.epa.gov/air/genconform/>. Additional information about general conformity is available through the National Wildfire Coordinating Group Smoke Committee's on-line training site: <http://www.cnr.uidaho.edu/smoc/conformity.htm>.

### Federal Actions Covered by the Rule

Federal actions that occur within designated non-attainment or maintenance areas and that could impact air quality are covered. Under these regulations, "federal action" is defined as: (1) actions taken by the federal agency itself; and (2) actions of non-federal entities that the federal agency approves, funds, licenses, or permits.

### Federal Actions Exempted from General Conformity Regulations

Federal actions that are exempt from the General Conformity Rule include:

- Actions outside of designated non-attainment and maintenance areas.
- Actions covered by the transportation conformity rule,
- Actions with associated emissions below specified *de minimis* levels;
- Actions listed as exempt in the General Conformity Rule (40CFR93.153), and
- Actions covered by a Presumed-to-Conform approved list.

### The Process of Determining Conformity

Federal agencies must make their own conformity determinations in 3 steps:

- (1) Applicability Analysis (the agency determines whether the action is exempted or not);
- (2) Conformity Analysis (the agency shows that the action conforms to the approved SIP/TIP/FIP or where an approved SIP/TIP does not exist, conformity is determined pursuant to 40 CFR 93-SubpartB);
- (3) Reporting Requirements (requires a 30-day notice describing the proposed action and the draft conformity determination; requires notice within 30 days of the final determination; requires written response to comments; and requires its list of "presumed-to-conform" actions to be published in the Federal Register).

### Implications to Federal Wildland Fire Programs

#### Prescribed Fires:

- The rule includes prescribed fires in the "presumed-to-conform" category if the burn is conducted in accordance with a smoke management program (SMP) that meets the EPA's Interim Air Quality Policy on Wildland and Prescribed Fires or revised policy. As stated in the Rule's pre-ambule, EPA recognizes that prescribed fires employing basic smoke management practices (BSMP) may meet a presumption of conformity if previously established pursuant to the Rule requirements. BSMPs are recognized practices designed to protect the public from smoke exposure, help avoid a NAAQS exceedance, and minimize impacts on sensitive areas. BSMPs can be applied regardless of whether a SMP is in place or not. Some key BSMPs are:



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meteorological scheduling, smoke impact evaluation, monitoring effects of the fire on air quality, documenting the smoke dispersion, reducing exposures to the smoke, and notifying the public.

- Given the expectation that the number of non-attainment areas will increase across the U.S. as a result of proposed changes to the ozone and particulate matter NAAQS, the workload will increase for Federal agencies to implement their prescribed fire programs. Potentially as much as 207 million acres of Federal lands may be designated non-attainment. Agencies will need to work with the States/Tribes/EPA to get prescribed fire emissions built into the SIPs/TIPs and in the presumed-to-conform actions up front.
  - Under the General Conformity Rule, Federal lands adjacent to non-attainment areas are exempt from the conformity requirements. However, EPA has indicated an intention to do supplemental rulemaking to apply general conformity requirements to areas in attainment that impact downwind non-attainment areas. Even if EPA does not move this forward, agencies could see impacts to prescribed burning programs depending on how a State or Tribe develops SIP/TIP requirements to improve air quality (e.g., emissions from sources outside of the non-attainment area could be required to follow certain procedures if emissions would impact the downwind non-attainment area).

### Wildfires

- Actions taken in response to wildfires (an emergency event) will be exempt for 6 months from the need to have conformity analysis completed. This exemption may be extended for an additional 6 months pending notification to EPA and the State/Tribe and their review and comments.

### **Recommendations: Land Managers need to get involved in the Regulatory Process**

- EPA recommends that Federal agencies work with the States to develop and finalize SMPs or to include prescribed fires conducted in accordance with BSMPs as presumed-to-conform actions in the applicable SIP. Furthermore, EPA notes that Federal agencies could undertake actions in accordance with the Rule (40 CFR 93.153(f) and (g)) to include prescribed fires conducted in accordance with specific BSMPs that have been publicly and State reviewed as actions that are presumed to conform.
- In developing SIPs, many States undertake stakeholder processes in which wildland managers can participate. In the absence of such processes, there will also be opportunities to provide public comment regarding the approach the State takes to achieve attainment. Prior to getting involved in stakeholder or other regulatory air quality processes, agency land managers should engage their local agency air quality specialist. The agency air quality specialist may already be engaged in the stakeholder process thus greatly assisting fire programs in interfacing with air quality regulators during SIP development. If not already engaged, then they can facilitate the communication process.
- Federal agencies should work with EPA/States/Tribes to get emissions from the prescribed fire programs included in the statewide emissions inventories.

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